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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DAVID RICE and ELIZABETH RICE,
10 individually and as a marital community,
11 and SETH DONAHUE,

12 Plaintiffs,

13 v.

14 CITY OF ROY, a Washington
15 municipality, CHRIS JOHNSON,
16 individually, and DARWIN ARMITAGE,
17 individually,

18 Defendants.

CASE NO. 3:20-cv-05223 RJB

ORDER ON DEFENDANTS'
MOTION FOR PROTECTIVE
ORDER

19 THIS MATTER comes before the Court on the Defendants' Motion for Protective Order
20 Quashing Five Deposition Notices and Accompanying Subpoenas. Dkt. 65. The Court has
21 reviewed the pleadings filed regarding the motion and the remaining file.

22 This case arises from a police officer involved shooting just south of the Roy,
23 Washington city limits in February of 2019. Dkt. 1. Trial in the case is set to begin on August
24 23, 2021. Dkt. 16.

FACTS

25 The Plaintiffs allege that David Rice and his nephew, Seth Donahue, were driving a
26 moving utility vehicle ("UTV") southbound on a set of railroad tracks and City of Roy Police

1 Officer Chris Johnson lit up his vehicle's spotlight and, without warning, began shooting at
2 them. Dkt. 1. Plaintiffs Rice and Donahue make federal claims for violation of their Fourth
3 Amendment rights to be free from unreasonable seizures and their Fourteenth Amendment rights
4 to be free from arrest without probable cause and the excessive use of force. *Id.* They make
5 state law claims for negligence, false arrest, battery, emotional distress, and Plaintiff Elizabeth
6 Rice makes a claim for loss of consortium. *Id.* The Plaintiffs seek damages, attorneys' fees and
7 costs. *Id.*

8 In the June 10, 2020 case scheduling order, the expert disclosure deadline was February
9 24, 2021 and the discovery deadline was April 26, 2021. Dkt. 16. By order of the Court, the
10 expert disclosure deadline was extended to May 7, 2021 and the discovery deadline was
11 extended to June 18, 2021. Dkts. 36 and 46.

12 On June 20, 2020, the Plaintiffs disclosed four possible experts: Craig Alan Luker,
13 Matthew Noedel, Neil Low, and William Harmening. Dkt. 66-1, at 23.

14 On October 21, 2020, the Plaintiffs deposed Defendant City of Roy Police Chief Darwin
15 Armitage (who has since retired), for around six and one-half hours. Dkt. 66-1. They deposed
16 City of Roy Mayor Rawlin (Anthony) McDaniel for around three and one-half hours on
17 December 22, 2020. *Id.* Chief Armitage was replaced on his retirement by his wife, Sonia
18 Gomez-Armitage in January of 2021. Dkt. 66.

19 On May 7, 2021, the Plaintiffs disclosed Neil Low's report, who they have identified as a
20 police practices expert. Dkt. 66-1, at 136-140. In this report, Mr. Low surmises that Mayor
21 McDaniel may have been inside Officer Johnson's vehicle at the time, based on his reading of
22 Mayor McDaniel's responses during his deposition. Dkt. 66-1, at 140. Mr. Low states he thinks
23 that Mayor McDaniel was less than candid. *Id.*

1 On May 19, 2021, the Plaintiffs filed a motion to continue the Defendants' motion for
2 partial summary judgment pursuant to Fed. R. Civ. P. 56(d) from May 28, 2021 to July 2, 2021.
3 Dkt. 55. They sought the continuation to gather additional discovery, including seeking an order
4 compelling the deposition of Lorrie McDaniel, Mayor McDaniel's wife, additional depositions
5 of Mayor McDaniel, Chief Darwin Armitage, as well as City of Roy Attorney Lisa Elliott. *Id.*

6 On May 24, 2021, the Plaintiffs' motion was granted. Dkt. 58. The order noted that
7 "[t]he issue of whether the all depositions the Plaintiffs' wish to hold will yield the information
8 they would like, or whether these deponents will be protected by some sort of privilege, remains
9 to be seen." Dkt. 58.

10 On June 11, 2021, the Plaintiffs sent five new deposition notices and subpoenas to
11 defense counsel for Mayor McDaniel, Mrs. McDaniel, Chief Darwin Armitage, Chief Sonia
12 Gomez-Armitage, and Ms. Elliott noting their depositions for June 18, 2021 (the discovery
13 deadline). Dkt. 66, at 2. It is undisputed that the non-party deponents were not properly served.
14 *Id.* On June 17, 2021, Plaintiffs served defense counsel with the notices and subpoenas after the
15 proposed deponents gave her permission to accept service on their behalf. *Id.* No date was
16 noted for the depositions. *Id.*

17 This motion for protective order was filed on June 17, 2021, seeking an order quashing
18 these five deposition notices and subpoenas. Dkt. 65. In their response, the Plaintiffs state that
19 they are withdrawing the deposition notices to Mrs. McDaniel and Ms. Elliot. Dkt. 75. This
20 opinion will consider the motion for protective order only as to the remaining three: Mayor
21 McDaniel, Chief Darwin Armitage, and Chief Sonia Gomez-Armitage.

22 DISCUSSION

23 Under Fed. R. Civ. P. 26(b)(1),
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1 Parties may obtain discovery regarding any nonprivileged matter that is relevant to
2 any party's claim or defense and proportional to the needs of the case, considering
3 the importance of the issues at stake in the action, the amount in controversy, the
4 parties' relative access to relevant information, the parties' resources, the
importance of the discovery in resolving the issues, and whether the burden or
expense of the proposed discovery outweighs its benefit. Information within this
scope of discovery need not be admissible in evidence to be discoverable.

5 Under Fed. R. Civ. P. 26(b)(2)(C),

6 On motion or on its own, the court must limit the frequency or extent of discovery
otherwise allowed by these rules or by local rule if it determines that:

7 (i) the discovery sought is unreasonably cumulative or duplicative, or can be
8 obtained from some other source that is more convenient, less burdensome, or less
expensive;

9 (ii) the party seeking discovery has had ample opportunity to obtain the
10 information by discovery in the action; or

11 (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

12 Pursuant to Rule 26(c)(1)(A), for good cause, the court may "issue an order to protect a party or
13 person from . . . oppression, or undue burden or expense, including . . . forbidding the disclosure
14 or discovery . . ." Further, Rule 30(a)(2)(A)(ii) requires leave of court before a second
15 deposition may be taken.

16 The Defendants' motion protecting Mayor McDaniel and Chief Darwin Armitage, from
17 having to sit for a second deposition and motion to quash their deposition notices and subpoenas
18 (Dkt. 65) should be granted. They have shown good cause for an order protecting these parties.
19 Rule 26(c)(1)(A). The Plaintiffs did not obtain leave of Court for those depositions. Rule
20 30(a)(2)(A)(ii). Moreover, they had "ample opportunity to obtain the information" sought from
21 Mayor McDaniel and Chief Darwin Armitage at their October and December 2020 depositions.
22 Rule 26(b)(2)(C)(ii). The Plaintiffs' concerns, roused by their expert's supposition that Mayor
23 McDaniel was not being candid in his deposition, are not sufficient grounds to require they sit
24 for another deposition. The Plaintiffs' lawyer was present at the depositions and heard the same

1 information. There is no showing that forcing them to sit for another deposition is warranted.
2 The notices of Mayor McDaniel's and Chief Darwin Armitage's second depositions and
3 subpoenas should be quashed.

4 The motion to protect the wife of Chief Darwin Armitage (Chief Sonia Gomez-Armitage)
5 from sitting for a deposition and to motion quash her deposition notice and subpoena (Dkt. 65)
6 should be denied. While the Defendants point out that some of her testimony may be protected
7 by the marital communications privilege, *United States v. Griffin*, 440 F.3d 1138, 1143-44 (9th
8 Cir. 2006) and RCW 5.60.060(1), the Plaintiffs show that they seek her deposition for other
9 information as well. While her testimony appears to be of marginal help and some of which may
10 be protected, the notice of her deposition and the subpoena should not be quashed.

11 The Defendants' Motion for Protective Order Quashing Five Deposition Notices and
12 Accompanying Subpoenas (Dkt. 65) should be granted, in part, and denied, in part as above.

13 **IT IS SO ORDERED.**

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
15 to any party appearing *pro se* at said party's last known address.

16 Dated this 28th day of June, 2021.

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18 ROBERT J. BRYAN
19 United States District Judge
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